

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2014 No. 183, 2014**

Issued by authority of the Assistant Minister for Infrastructure and Regional Development

*Australian Capital Territory (Self-Government) Act 1988*

*Australian Capital Territory (Self-Government) Regulations 1989*

*Australian Capital Territory (Self-Government) Amendment  
(Water Management) Regulation 2014*

Section 74 of the *Australian Capital Territory (Self-Government) Act 1988* provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 27 of the *Australian Capital Territory (Self-Government) Act 1988* provides that an enactment of the Australian Capital Territory (ACT) does not bind the Crown in right of the Commonwealth except as provided for by regulations made under the Act.

Regulation 3B of the *Australian Capital Territory (Self-Government) Regulations 1989* provides that for the purposes of section 27 of the *Australian Capital Territory (Self-Government) Act 1988* the Crown in right of the Commonwealth may be bound by an enactment of the ACT that is specified in the Schedule to the *Australian Capital Territory (Self-Government) Regulations 1989*.

The amendments to the regulations give full effect to the legislative reforms made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013*. These reforms transfer from the Commonwealth to the ACT responsibility for the management and regulation of water abstraction by Commonwealth bodies and bodies abstracting water on national land in the ACT. This enables the ACT to manage all water abstraction in the ACT (including by Commonwealth bodies and on national land) as part of its water resource planning arrangements which in future will be accredited by the Commonwealth Minister responsible for Water as consistent with the Murray-Darling Basin Plan.

Under the reforms, private entities abstracting water on national land are bound by the *Water Resources Act 2007* (ACT). To provide a consistent approach to water abstraction in the ACT as between private and Commonwealth bodies, these regulations provide that the *Water Resources Act 2007* (ACT) binds Commonwealth bodies extracting water in the ACT, subject to excluding prosecution for an offence under the *Water Resources Act 2007* (ACT).

The Department of the Environment consulted the Department of Infrastructure and Regional Development, the Department of Finance, the ACT Environment and Planning Directorate, and Commonwealth water abstractors in the ACT in the process of making this regulation. Private water abstractors on national land in the ACT were also consulted in the process of making the *Australian Capital Territory Water Management Legislation Amendment Act 2013*.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on 18 December 2014 which is the date on which the *Australian Capital Territory Water Management Legislation Amendment Act 2013* commenced.

After consulting the Office of Best Practice Regulation in respect of the need for, and preparation of, a Regulation Impact Statement, it advised that a Regulation Impact Statement was not required (OBPR reference 10296), as the reforms are of minor impact.

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### *Australian Capital Territory (Self-Government) Amendment (Water Management) Regulation 2014*

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Legislative Instrument

The purpose of this Regulation is to give full effect to the reforms made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013*. These reforms transfer from the Commonwealth to the ACT responsibility for the management and regulation of water abstraction by Commonwealth bodies and bodies abstracting water on national land in the ACT. This change enables the ACT to manage all water abstraction in the ACT (including by Commonwealth bodies and on national land) as part of its water resource planning arrangements which in future will be accredited by the Commonwealth Minister responsible for Water as consistent with the Murray-Darling Basin Plan.

#### Human rights implications

This legislative instrument engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to ‘sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses’.<sup>1</sup>

The purpose of the amendments made by this Regulation is to complete the reforms made by the *Australian Capital Territory Water Management Legislation Amendment Act 2013*. These reforms enable effective planning and management for the sustainable use of the water in the ACT, in accordance with the Murray-Darling Basin Plan made under the *Water Act 2007*. The human rights implications of the legislative instrument must be considered in the context of the *Water Act 2007*. The overall framework of the *Water Act 2007* supports access to sufficient,

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<sup>1</sup> CESCR General Comment No.15: The Right to Water E/C 12/2002/11.

safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in the Act by section 20 which sets out the purpose of the Basin Plan 2012 and is supported by subsection 22(1) which sets out the specific content required to be included in the Basin Plan, such as a water quality and salinity management plan (Item 10). These sections, together with subsection 86A(1)(a) which requires regard to be given to critical human water needs and water quality, support the human right to water.

### Conclusion

The legislative instrument is compatible with human rights because it supports the human right to water.

## **Details of the *Australian Capital Territory (Self-Government) Amendment (Water Management) Regulation 2014***

### **Section 1 - Name of Regulation**

This section provides that the name of the Regulation is the *Australian Capital Territory (Self-Government) Amendment (Water Management) Regulation 2014* (the Regulation).

### **Section 2 - Commencement**

This section provides that the Regulation commences on 18 December 2014. This commencement date aligns with the commencement date for the *Australian Capital Territory Water Management Legislation Amendment Act 2013*.

### **Section 3 - Authority**

This section provides that the Regulation is made under the *Australian Capital Territory (Self-Government) Act 1988*.

### **Section 4 - Schedules**

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule and any other item in a Schedule has effect according to its terms.

## **Schedule 1 to the Regulation – Amendments**

### ***Amendments to the Australian Capital Territory (Self-Government) Regulations 1989 (the Regulation)***

#### **Item [1]**

This item inserts new regulation 3C into the Regulation.

Regulation 3C provides for the *Water Resources Act 2007* (ACT) to bind the Crown in right of the Commonwealth, subject to excluding prosecution for an offence under the *Water Resources Act 2007* (ACT).

Part 6 of the *Water Resources Act 2007* (ACT) includes a civil enforcement regime in the form of disciplinary action against a person who holds a water access entitlement or licence.

This could include, for example, amending a licence condition or suspending a licence.

Alternative regulatory options would also apply to Commonwealth bodies, such as education, warnings, directions and financial instruments.

New regulation 3C is necessary, rather than listing the *Water Resources Act 2007* (ACT) in the Schedule to the *Australian Capital Territory (Self-Government) Regulations 1989* pursuant to regulation 3B of the Regulation, because the entire *Water Resources Act 2007* (ACT) will not bind the Crown in right of the Commonwealth.